IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9271 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW INDIA ASSURANCE CO. LTD.

Versus

HELLUBEN WD/O RUDABHAI K BHARWAD

Appearance:

1. Special Civil Application No. 9271 of 2002

MR RAJNI H MEHTA for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-5

MR MTM HAKIM for Respondent No. 6-7

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/10/2002

ORAL JUDGEMENT

Rule. Mr. M.T.M.Hakim, learned advocate appears and waives service of notice of Rule on behalf of

Respondent No.7. Despite notice came to be served to remaining respondents, they have chosen to remain absent, therefore, it is not necessary to serve the Rule to them and they are also not necessary parties to adjudicate the issue raised in this petition.

2. In this petition which is filed under Article 227 of the Constitution, petitioner seeks to challenge the order dated June 25, 2002 recorded below application Exhibit 85 in MACP No. 144 of 1991 by the MACT (Main) Bharuch by which the application filed by the petitioner to examine Opponent No.7, who happens to be the owner of one of the vehicles involved in the accident, came to be rejected.

3. Having heard Mr. Rajni Mehta, learned advocate for the petitioner and Mr. M.T.M.Hakim, learned advocate for respondent No.7 and on having perusal of the averments made in the memo of the petition, grounds set out therein and the impugned order, and on the facts and in the circumstances emerging from the record of the case, I am of the opinion that if Respondent No.7, who happens to be the owner of one of the vehicles involved in the accident is examined, no prejudice would be caused to Respondent No.7 as well as the original claimant, and therefore, the order which is impugned in this petition is deserves to be quashed and set aside by allowing this petition.

4. For the foregoing reasons, petition succeeds and accordingly it is allowed. The impugned order dated June 25, 2002 is quashed and set aside. The application Exhibit 85 is allowed. The MACT (Main) Bharuch is directed to examine the Opponent No.7 as a witness on behalf of the petitioner Insurance Company considering the reply filed by him. It is also expected that the learned Tribunal shall examine Opponent No.7 as a witness on behalf of the petitioner at the earliest and shall conclude the petition as early as possible.

Rule is made absolute. Ad-interim relief granted earlier shall stand vacated.

(A.M.Kapadia,J)

Jayanti*